



# HALYK·KENNEDY·NOSKIE·KNOX

Barristers & Solicitors

April 2, 2004

Commission of Inquiry into the  
Wrongful Conviction of David Milgaard  
1020-606 Spadina Crescent  
SASKATOON, SK. S7K 3H1

**ATTENTION: MR. JUSTICE EDWARD P. MacCALLUM**

Dear Sir:

Re: Application for Standing and Funding by T.D.R. Caldwell  
formerly of the Saskatchewan Prosecutions Service

Take Notice that T.D.R. Caldwell makes application for standing and for funding at the Commission of Inquiry into the Wrongful Conviction of David Milgaard.

And Further Take Notice that the Application for Standing is based on the following:

1. The Applicant, T.D.R. Caldwell was formerly a member of the Public Prosecutions Service of the Department of Justice in the Province of Saskatchewan. During his time as the Senior Crown Prosecutor in the City of Saskatoon, he prosecuted David Milgaard for murder and David Milgaard was convicted by a court composed of judge and jury. Events thereafter have established that David Milgaard was wrongfully convicted. Mr. Caldwell anticipates that he will be called as witness at the Inquiry and believes he will be directly and substantially affected by the Inquiry.

And further take notice that the Applicant makes Application for Funding based on the following criteria:

1. That it is respectfully submitted that the Applicant must be granted standing at the Inquiry;
2. Although the Applicant has not requested this Inquiry take place, he will be called as a witness and will be substantially and directly affected by the

- Inquiry as it is the Applicant's conduct in the prosecution of David Milgaard which will be the focal point of the Inquiry;
3. The Minister of Justice has refused to retain counsel to represent the Applicant at this Inquiry as is evidenced in the attached letter from D. A. McKillop, Crown Counsel dated April 2, 2004.
  4. The Applicant does not have sufficient financial resources to enable him to adequately represent his own interests.
  5. The Applicant has requested that Silas E. Halyk, Q.C. and Catherine M. Knox, Barristers and Solicitors of the firm Halyk Kennedy Koskie Knox be his counsel at the Inquiry.

And further take notice in support of this Application is filed the Affidavit of Valerie Makela, Legal Assistant to Silas E. Halyk, Q.C. to which the correspondence from Mr. McKillop is attached as Exhibit "A."

It is respectfully requested that the Commissioner of the Commission of Inquiry into the Wrongful Conviction of David Milgaard order the following:

1. That standing be granted to T.D.R. Caldwell at the said Commission of Inquiry;
2. That the Applicant, T.D.R. Caldwell be granted funding sufficient to retain the services of Silas E. Halyk, Q.C. and Catherine M. Knox as his counsel at the Inquiry at such hourly rate and such terms as may be agreed upon including an appropriate fee for the time required to review the extensive materials that exist in this matter and prepare for the attendance at the Inquiry as well as any disbursements as may be reasonably incurred.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 2 day of April, 2004.

  
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SILAS E. HALYK, Q.C.

INQUIRY INTO THE MATTERS RELATING TO  
THE WRONGFUL CONVICTION OF DAVID MILGAARD

APPLICATION FOR STANDING AND  
FUNDING BY T.D.R. CALDWELL, Q.C.

TO:

HONOURABLE MR. JUSTICE EDWARD P. MacCALLUM, COMMISSIONER  
THE COMMISSION OF INQUIRY INTO  
THE WRONGFUL CONVICTION OF DAVID MILGAARD

AFFIDAVIT OF VALERIE MAKELA

I, VALERIE MAKELA, of the City of Saskatoon, in the Province of Saskatchewan,

Legal Assistant, MAKE OATH AND SAY AS FOLLOWS:

1. That I have personal knowledge of the facts and matters herein deposed to except where stated to be on information and belief and where so stated I do verily believe the same to be true.
2. That I am and have for many years been the personal secretary to Silas E. Halyk, Q.C.
3. That attached hereto and marked as Exhibit "A" to this my affidavit is a copy of a letter received by me by fax to our office on the 2<sup>nd</sup> day of April, 2004.

SWORN BEFORE ME at Saskatoon, )  
in the Province of Saskatchewan, )  
this 2<sup>nd</sup> day of April, 2004. )



A COMMISSIONER FOR OATHS in and )  
for the Province of Saskatchewan )  
My Commission expires Feb 28, 2006 )  
- OR - Being a Solicitor )



# Saskatchewan



Justice

1874 Scarth Street  
Regina, Canada  
S4P 3V7

Civil Law Division

April 2, 2004

Please Reply To:  
D. A. McKillop, Q.C.  
Phone: (306) 787-7442  
Fax: (306) 787-0581  
File No.:

Halyk Kennedy Koskie Knox  
Barristers and Solicitors  
321 - 6<sup>th</sup> Avenue North  
Saskatoon, Saskatchewan  
S7K 2S3

VIA FAX: (306) 652-1915

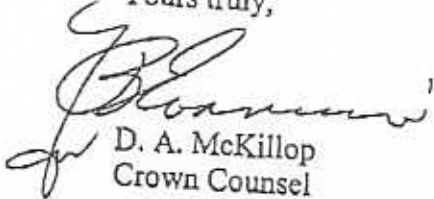
Attention: Silas Halyk, Q.C.

Dear Sir:

Re: **Milgaard Inquiry - Representation of Mr. Caldwell**

I write to confirm the information that I have recently been able to pass to you by telephone to the effect that the department is not prepared to retain you to represent Mr. Caldwell before the Inquiry as you had requested on his behalf. We certainly understand that you may well be instructed to ask the Commissioner for funding on behalf of Mr. Caldwell but of course that would raise a decision for the Commissioner that the department has no control over.

Yours truly,

  
D. A. McKillop  
Crown Counsel

DAM:be

c. Gerald Tegart, Q.C., Executive Director  
Civil Law Division

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THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF D. A. McKillop  
SWORN BEFORE ME THIS 2nd DAY  
OF April A.D. 2004  
D. A. McKillop

A Commissioner for Oaths in and for the  
Province of Saskatchewan. Being a Solicitor  
My Commission expires on Feb 28, 2006